

### ***Remarks***

Reconsideration of this Application is respectfully requested. Upon entry of the foregoing amendment, claims 9-20 and 35-36 are pending in the application, with claims 9, 35 and 36 being the independent claims.

### ***Examiner Interview***

Applicants appreciate the courtesies extended by the Examiner and his Supervisor during the personal interview conducted on December 15, 2003. During the interview the rejections of claims 9-20, 35 and 36 were discussed with respect to the Harrington and Zimmerman patents. The possibility of amending the independent claims to further define the spatial position as including a distance and a direction was discussed.

### ***Objections to the Specification***

The disclosure is objected to because of certain informalities. Applicants have amended the specification as suggested by the Examiner to overcome the objections. Accordingly, Applicants respectfully request that the Examiner withdraw the objections.

### ***Claim Rejections Under 35 U.S.C. 102(b)***

Claims 9, 20, 35 and 36 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,988,981 to Zimmerman et al. ("the Zimmerman patent"). Applicants respectfully traverse the rejection for the reasons set forth below.

### **Independent Claim 9 and its Dependent Claims**

The invention recited in independent claim 9 includes "a data processor configured to generate an output signal associated with the spatial position of the position sensing element based on the signal, said data processor configured to determine a spatial position of the mount,

the spatial position of the mount being associated with a distance and direction from the predetermined reference point.”

The Zimmerman patent discloses a glove including sensors that are configured to measure the orientation of the wearer’s finger (i.e., the degree of bend). The signal generated is associated with the position of the photo-sensor with respect to a light source, both of which are disposed on the glove. The Zimmerman patent fails to disclose or suggest, however, determining a spatial position of the mount where “the spatial position of the mount [is] associated with a distance and a direction from the predetermined reference point” as recited in claim 9. For at least this reason, independent claim 9 is allowable over the Zimmerman patent. Based at least on its dependence upon independent claim 9, dependent claim 20 is also allowable.

#### Independent Claim 35

The invention recited in independent claim 35 includes “calculating a spatial position of the mount based on the output signal, the spatial position of the mount being associated with a distance and a direction from the predetermined reference point.”

As discussed above, the Zimmerman patent fails to disclose “calculating a spatial position of the mount based on the output signal, *the spatial position of the mount being associated with a distance and a direction from the predetermined reference point*” as recited in independent claim 35. For at least this reason, independent claim 35 is allowable over the Zimmerman patent.

#### Independent Claim 36

The invention recited in independent claim 36 includes “code for calculating a spatial position of the mount based on the output signal, the spatial position of the mount being associated with a distance and a direction from the predetermined reference point.”

As discussed above, the Zimmerman patent fails to disclose “calculating a spatial position of the mount based on the output signal, *the spatial position of the mount being associated with a distance and a direction from the predetermined reference point*” as recited in independent claim 36. For at least this reason, independent claim 36 is allowable over the Zimmerman patent.

***Claim Rejections Under 35 U.S.C. 102(e)***

Claims 9-11, 16, 17, 20, 35 and 36 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,107,855 to Harrington et al. (“the Harrington patent”). Applicants respectfully traverse the rejection for the reasons set forth below.

**Independent Claim 9 and its Dependent Claims**

The invention recited in independent claim 9 includes “a data processor configured to generate an output signal associated with the spatial position of the position sensing element based on the signal, said data processor configured to determine a spatial position of the mount, the spatial position of the mount being associated with a distance and a direction from the predetermined reference point.”

The Harrington patent discloses an apnea monitor having a mount that supports a position sensing element that moves within the mount. The apnea monitor measures the position of the position-sensing element within the mount at various time intervals to ensure appropriate movement. The spatial position of the mount itself is not determined. Moreover, the Harrington patent fails to disclose or suggest, determining the “spatial position of the mount, the spatial position of the mount being associated with a distance and a direction from the predetermined reference point” as recited in claim 9. For at least this reason, independent claim 9 is allowable

over the Harrington patent. Based at least on their dependence upon independent claim 9, dependent claims 10, 11, 16, 17 and 20 are also allowable.

Independent Claim 35

The invention recited in independent claim 35 includes “calculating a spatial position of the mount based on the output signal, the spatial position of the mount being associated with a distance and a direction from the predetermined reference point.”

As discussed above, the Harrington patent fails to disclose “calculating a spatial position of the mount based on the output signal, *the spatial position of the mount being associated with a distance and a direction from the predetermined reference point*” as recited in independent claim 35. For at least this reason, independent claim 35 is allowable over the Harrington patent.

Independent Claim 36

The invention recited in independent claim 36 includes “code for calculating a spatial position of the mount based on the output signal, the spatial position of the mount being associated with a distance and a direction from the predetermined reference point.”

As discussed above, the Harrington patent fails to disclose “calculating a spatial position of the mount based on the output signal, *the spatial position of the mount being associated with a distance and a direction from the predetermined reference point*” as recited in independent claim 36. For at least this reason, independent claim 36 is allowable over the Harrington patent.

***Claim Rejections Under 35 U.S.C. 103(a)***

Claims 10-15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the Zimmerman patent. Based at least on their dependence upon independent claim 9, which is allowable for the reasons discussed above, dependent claims 10-15 are also allowable.

***Double Patenting***

Claims 9, 17-20, 35 and 36 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 5,676,157 to Kramer. Claim 9, 17-20, 35 and 36 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,162,190 to Kramer. Applicants have filed a Terminal Disclaimer herewith to overcome the double patenting rejection. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection.

***Conclusion***

All of the stated grounds of rejection have been properly traversed or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicants believe that a full and complete response has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,

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Date: January 30, 2004

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